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March 19, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: WC Docket No. 03-16, *Application by SBC Communications Inc., et al.,
for Provision of In-Region, InterLATA Services in Michigan*

Dear Ms. Dortch:

Pursuant to the request of Commission Staff, AT&T Corp. submits this letter to describe the anti-competitive impact of recent "missing" and delayed billing completion notices ("BCNs"), and to respond to SBC's erroneous attempts, in reply comments and in recent ex parte submissions, to minimize the significance of its failures to deliver timely BCNs.¹

1. The Anticompetitive Impact of Withheld and Missing BCNs:

AT&T has previously submitted evidence that, in January 2003, SBC failed to provide timely delivery of tens of thousands of BCNs. This failure is traceable in part to a systemwide programming defect in SBC's OSS which SBC has admitted occurred,² which SBC investigated for nearly two months before reporting it to CLECs,³ and which SBC concedes is responsible for its failure to send over twelve thousand BCNs.⁴ It is also traceable to SBC's knowing decision to withhold additional BCNs without prior notice to AT&T while SBC was

¹ To facilitate a prompt filing, this letter is supported by verifications as to the facts recited herein; it will be further supported by supplemental declarations covering these and other OSS and performance measure issues that are in preparation and will be filed shortly.

² See SBC Reply Comments 23; DeYoung/Willard Opening Decl. ¶¶ 91-97.

³ See Cottrell/Lawson Joint Reply Aff. ¶¶ 125-26.

⁴ See electronic mail message from Thomas O. Himm (Pacific) to Walter W. Willard (AT&T), dated February 6, 2003 (acknowledging that SBC had failed to send 12,864 "PTBs" – i.e., BCNs – to AT&T).

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conducting billing “reconciliation.”⁵ SBC previously admitted that thousands of BCNs were withheld during an initial period of billing reconciliation.⁶ On March 10, 2003, however, SBC advised AT&T that it had withheld an additional 9,930 BCNs from transmission at some later point during billing reconciliation.⁷

SBC’s conceded failure to deliver over twenty thousand timely BCNs⁸ has directly and adversely affected AT&T’s ability to compete with SBC. These BCN delays have prevented AT&T from providing its new customers with a prompt response to their requests for changes in the features associated with their AT&T-provided local service. SBC has thus undercut AT&T’s ability to compete with SBC, and has done so in a manner that is quite visible to AT&T’s customers.

SBC first made BCNs available to CLECs with the release of LSOG 5. Issuance of a BCN notifies a CLEC that SBC has “posted to bill” or updated its billing systems to reflect that the CLEC is now serving the customer, or that a CLEC change to an end-user’s account completed final processing as denoted by having been posted on the SBC billing systems. The BCN is important to AT&T because it lets AT&T know – via electronic notification – that AT&T can now submit a change or supplemental order for its new (or existing) customer without fear that SBC will reject that order on the ground that the customer is not the CLEC’s customer or that the account is not currently configured to receive orders to add, delete, or change features. *See* DeYoung/Willard Opening Decl. ¶¶ 92-93. New customers frequently contact AT&T soon after signing up for service to request a feature change, and AT&T’s customer representatives immediately process these requests and prepare them for transmission to SBC’s OSS. Likewise, existing customers may also be affected if they decide to modify their original request. But the change orders are not immediately released to SBC. To avoid the delays associated with order-rejection, AT&T designed its LSOG 5 systems to “stack” these orders, much like airplanes waiting for release by air traffic control, until the BCN arrives.

⁵ Ex Parte Letter from Geoffrey M. Klineberg, to Marlene H. Dortch (March 14, 2003 at Att. B, p. 3 n.10).

⁶ *See* DeYoung/Willard Reply Decl. ¶¶ 68-69.

⁷ *See* electronic mail message from Thomas O. Himm (Pacific) to Carol Conlon (AT&T), dated March 10, 2003.

⁸ A precise accounting of how many BCNs SBC has failed to send AT&T on a timely basis is not possible at this time. As noted, SBC has admitted to over 20,000 untimely BCNs regionwide, and AT&T believes the number may be much larger. For example, AT&T’s records show that as of January 30, 2003 AT&T was awaiting BCNs on 65,000 orders in the Ameritech region for which it had received a SOC. AT&T has no ready means to calculate how far overdue each of these BCNs was, or to determine for what reason any particular BCN had not been delivered. As shown below, no more precise accounting is needed, because the anticompetitive impact of the admitted BCN delays on AT&T’s ability to obtain prompt processing of change orders, both in Michigan alone and in the region, is stark.

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The impact of SBC's failure to provide AT&T with timely BCNs in January is directly reflected in the exceptionally large number of stacked orders. During January 2003, AT&T had 2,343 stacked orders in Michigan as a result of SBC's failure to send a BCN,⁹ and over 6,500 stacked orders in the four states in the Ameritech region where AT&T currently offers local service. These numbers are extremely high in absolute terms, for each represents a customer's request for a feature change (or other supplemental action) that AT&T could not promptly release to SBC. But this volume of stacked orders takes on additional significance when compared to the performance of other BOCs. For example, also in January 2003, AT&T had only 301 stacked orders in New Jersey (where AT&T placed a comparable number of new orders to that in Michigan), and only 471 stacked orders in New York (where AT&T placed significantly more new orders than in Michigan). AT&T thus had nearly 8 times more stacked orders in Michigan than in New Jersey, and nearly 5 times more stacked orders in Michigan than in New York, despite placing comparable or substantially higher volumes of orders in these other states.

These SBC-imposed delays in processing customer change orders translate directly into degraded customer service. The customers may have asked, for example, to change the number of rings before call answering picks up, or to disable the call waiting feature, or to add caller ID. When AT&T is unable promptly to respond to such a request, the customer knows it right away. For this delay, the customer will likely place the blame on AT&T – and may even cancel their service. Yet the fault lies solely with SBC. That is the essence of anticompetitive discrimination forbidden by section 251. SBC's deficient BCN performance alone precludes any finding that SBC has proven that it has fully implemented the competitive checklist.

SBC's delay in issuing BCNs has additional competitive significance. Lengthy delays in posting-to-bill create a potential risk that SBC will erroneously bill a CLEC's customer for the period after the issuance of the SOC (when the CLEC takes over service) and before the new order is posted-to-bill. Although SBC can cure the dollar overcharge by issuing a corrected final bill showing a credit, it cannot so easily cure the burden of checking and following up on such incorrect billing that SBC imposes on the customer who decides to switch away from SBC. Similarly, SBC's BCN delays increases the risk to the CLEC that it is receiving an erroneous wholesale bill from SBC. While the CLEC's wholesale bill may initially be understated for the period between the SOC and the posting-to-bill, SBC will then attempt later to collect the difference in a subsequent bill. The longer the delays, the greater the adjustments needed in the bills, which in turn imposes costs on CLECs that wish to verify the accuracy of such bill adjustments. Such costs would evaporate if SBC eliminated the BCN delays in the first place.

⁹ For purposes of these calculations, an order was treated as "stacked" in a particular month if it was first "stacked" at some time during that month. For example, if a change/supplemental order was "stacked" on January 2, 2003, it was included in the totals for January, even if the original order was sent in December 2002.

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Finally, SBC's conscious decision to withhold BCNs from AT&T without notification is yet another instance of SBC's violation of its obligations under the change management process ("CMP"). By intentionally blocking the BCNs from being transmitted over the mechanized interface, SBC made a temporary "change" to the interface and did so without any notice to the CLECs. SBC thus violated Section 1.0 of the CMP, which obligates SBC to "notify CLECs of changes to be made to the OSS interfaces." Withholding these BCNs was similarly an "operations change" that altered "existing functionality" by "changing the flow, or sequence, of interface operation" as covered by section 3.1.1 of the CMP. SBC's cavalier approach to making changes to the operation of its interfaces that directly, foreseeably, and adversely affect CLEC operations, and to do so without notice to the affected CLECs, is irreconcilable with its obligation to demonstrate, for purposes of 271 approval, that it "has adhered to [an adequate] change management process over time."¹⁰

2. SBC's Excuse (That AT&T Should Have Employed A Manual Process) Has No Merit

SBC concedes that it has failed to provide AT&T with timely BCNs due to both its "programming error" and its billing "reconciliation."¹¹ Nevertheless, SBC argues that these failures should be deemed competitively insignificant. SBC's position is that because SBC had no obligation to provide BCNs to AT&T prior to AT&T's transition to LSOG 5 on December 9, 2002, AT&T cannot fairly complain about any SBC failure – no matter how massive – to deliver BCNs after December 9.¹² SBC further argues that AT&T does not "need" BCNs because AT&T can manually check for such information on the CSR,¹³ and because the "absence" of a BCN "does not impede SBC's receipt of subsequent change activity on an account."¹⁴

SBC's arguments should be rejected out of hand. First, SBC should deem itself fortunate to have avoided an obligation to provide timely BCNs for as long as it has. Verizon has provided BCNs to CLECs since at least 1999. Verizon's BCN performance makes a mockery of SBC's. For example, in approving Verizon's Massachusetts application nearly two years ago, the Commission relied on Verizon's commercial data showing that between 97

¹⁰ See, e.g., *Massachusetts 271 Order* ¶¶ 102, 105; *New York 271 Order* ¶ 102; *Qwest Nine-State 271 Order*, App. D ¶ 40.

¹¹ See, e.g., SBC Reply Comments at 23 (conceding programming error that caused SBC not to send some BCNs and that took SBC nearly two full months to address); Ex Parte Letter from Geoffrey M. Klineberg, to Marlene H. Dortch (March 14, 2003 at Att. B, p. 3 n.10) (conceding additional delays in sending BCNs of up to 9 days due to "reconciliation").

¹² SBC Reply Comments 23-24; Cottrell/Lawson Reply Decl. ¶¶ 124-29.

¹³ SBC Reply Comments at 24.

¹⁴ Ex Parte Letter from Geoffrey M. Klineberg, to Marlene H. Dortch (March 14, 2003 at Att. B, p. 3 n.10).

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percent and 100 percent of the time, Verizon was delivering BCNs *within one day* after issuing a SOC.¹⁵

Because of the importance of obtaining timely BCNs, AT&T (along with other CLECs) requested during the Commission's collaborative sessions that BCNs be included as part of SBC's merger Plan of Record.¹⁶ SBC there committed to roll out BCNs in connection with its implementation of LSOG 5. SBC later encouraged AT&T to move to LSOG 5 stating that AT&T would receive improved OSS performance over LSOG 4. In reliance on these representations, AT&T reasonably designed its LSOG 5 systems to rely upon receipt of a BCN to release a customer's change order, and thus to take advantage of the electronic notification of bill-posting that a BCN provides.

Second, SBC's suggestion that AT&T should have avoided competitive injury by checking the status of order completion through a customer service inquiry (CSI) is wholly unfounded. Using a CSI to determine whether a change order may be released is a cumbersome manually-intensive process that would wholly defeat the purpose of a mechanized interface. Having promised to provide BCNs, SBC cannot reasonably fault AT&T for relying on them rather than on a non-standard manually-intensive process. Indeed, SBC's suggestion that AT&T should have relied on such manual checks is outrageous, given SBC's failure to notify AT&T in advance that SBC would be withholding BCNs for "up to 9 days during reconciliation."¹⁷

Third, SBC's proposal that AT&T rely on a CSI in the Ameritech region cannot be reconciled with SBC's practice in the rest of SBC's territory. SBC does not even keep a CSR for CLECs in the Pacific region, and keeps only a "toll file guide" or partial CSR for CLECs in the SWBT region. The "check the CSI approach" that SBC is suggesting here is thus one that AT&T could use only in the Ameritech region, and would defeat the uniformity required by the POR.

Fourth, SBC's CSI proposal is untenable because SBC has not shown that SBC was updating the customer service record in a timely fashion. The most SBC has been able to muster in this regard is the vague assertion of its witnesses that "[i]n most cases, the CSI is updated within 24 hours of service order completion, unless there is an error in the end user's account."¹⁸ This ambiguous statement is hardly a ringing confirmation of timely performance.

¹⁵ See, e.g., *Massachusetts 271 Order* ¶ 84 & n. 259.

¹⁶ AT&T also noted its desire for BCNs in its comments on SBC's Texas 271 Application. See Affidavit of Nancy Dalton and Sarah DeYoung filed January 31, 2000, in CC Docket No. 00-4, ¶¶ 186-87.

¹⁷ Ex Parte Letter from Geoffrey M. Klineberg, to Marlene H. Dortch (March 14, 2003 at Att. B, p. 3 n.10).

¹⁸ Cottrell/Lawson Reply Aff. ¶ 127.

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SBC's equivocation is understandable. AT&T's experience has been that for many orders SBC's Ameritech systems cause substantial posting delays – far exceeding 24 hours and, in some cases, exceeding a month.¹⁹ SBC does not formally report on its performance in this regard. But there are other indicators that point to a systemic inability on SBC's part to update its billing systems and issue BCNs in a timely fashion.

For example, SBC concedes that “Michigan Bell missed PM 17” – a related (though not identical) measure which reports the “percent of service orders that post to CABS within the current bill period” – “in 10 of the past 12 months.”²⁰ Indeed, SBC missed this measure – often by a wide margin – in every month from September 2002 through January 2003. SBC also advised CLECs in April 2002 that its backlog of “3E” orders (those caught between the SOC and the update of the CSI) was as long as 45 days.²¹

Perhaps most telling, however, is SBC's response to AT&T's recently renewed request that SBC establish a new performance measure (PM 17.1) to govern the timeliness of a BCN. Specifically, AT&T asked SBC to agree to the same performance measure and benchmark for BCNs in the Ameritech region as it is subject to in Texas, *i.e.*, 85% within 3 days of the SOC and 95% within 5 days. This request is all the more reasonable given Verizon's commitment to send BCNs within a day of the SOC. Nevertheless, SBC has thus far refused to agree to even the Texas standard, and has instead proposed far longer intervals of 10, 15, and even 20 days.

SBC thus badly misses the point when it claims, in its recent *ex parte* submissions, that the “absence” of a BCN “does not impede SBC's receipt of subsequent change activity on an account.”²² Even if delayed BCNs do not impede SBC's “receipt” of change orders, they seriously affect AT&T's ability to send them. For the reasons shown above, to check repeatedly to determine whether bill completions are reflected on the CSR is a labor-intensive and discriminatory process uniquely imposed in the Ameritech region. For SBC to insist that AT&T should have used that non-standard process – efficacious or not – after the implementation of LSOG 5 is unreasonable. And it is particularly unreasonable given SBC's failure to warn AT&T in advance of known delays in issuing BCNs.

¹⁹ DeYoung/Willard Opening Decl. ¶ 92 n.28. AT&T's experience is that the length of SBC's delays in delivering BCNs varies enormously, and can extend as long as 40 days.

²⁰ Ex Parte Letter from Geoffrey M. Klineberg, to Marlene H. Dortch (March 14, 2003 at Att. B, p. 3).

²¹ SBC acknowledged in April 2002 that it had a backlog of up to 45 days in processing those orders that had fallen into “3E error status,” which meant that the order had been provisioned and a SOC had issued, but that the order had not yet been posted to SBC's billing systems. Absent such acknowledgements by SBC, CLECs currently have no ability to track the volume of, or backlog in processing, orders in 3E status.

²² Ex Parte Letter from Geoffrey M. Klineberg, to Marlene H. Dortch (March 14, 2003 at Att. B, p. 3 n.10).

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SBC's failure to provide AT&T with a reasonable process for promptly submitting change orders for customers denies AT&T nondiscriminatory access to OSS. There is no evidence whatsoever that SBC's customers face any comparable delays. Such stark disparities in customer-affecting performance compel a conclusion that SBC has not yet fully implemented its checklist obligations with respect to OSS.

Respectfully submitted,

/s/ Richard E. Young

Richard E. Young

cc: John P. Stanley
Gina Spade
Susan Pie
Layla Seirafi-Najar
Dorothy Wideman
Ann R. Schneidwind

VERIFICATION PAGE

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on March 19, 2003

/s/ Walter W. Willard

Walter W. Willard

Attachment 1

From: HIMM, THOMAS O (PB) [mailto:th4767@sbc.com]
Sent: Monday, March 10, 2003 5:00 PM
To: Conlon, Carol L, CSLSM
Cc: BRYAN, JANICE J (SWBT)
Subject: AIT PTB's

Carol,

Per the attached Accessible Letter, we identified an issue in the AIT region in which PTB's were not released. We had previously supplied AT&T with the list of impacted PONs on February 6th for the PTB's that were re-flowed.

In doing a second pass scrub, it was determined that there were an additional 1,700 orders that were impacted, the PTB's associated with these order will be re-flowed tomorrow. The actual number of PTB's will be less then the 1,700 as this is at the order level and not the PON level.

<<Post to Bill clecams_03-008.doc>>

It was also brought to our attention late last week, that on Monday March 3rd a total of 9,930 PONs had PTB's sent as a portion of the UNE P reconciliation process which is outlined in the attached Accessible Letter and a list of the PONs are provided as well.

<<UNE P Billing Database Reconciliation and CSR Changes clecam_02-509.doc>>

<<UNE P Recon 030303.xls>>

There are approximately an additional 5,210 orders still associated with the UNE P reconciliation process which have yet to be processed. These will be released shortly and again will result in an actual number less then the 5,210 as this is a service order level.

Please let me know if you have any questions.

Tom

Thomas Himm

Area Manager - OSS Customer Support

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925-901-1540 (fax)